

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Yury KALNITSKY
Application No. : 10/760,137 Filed : January 16, 2004
Title : NETWORK ARCHITECTURE FOR DATA TRANSMISSION
Examiner : Chirag R. PATEL
Art Unit : 2141 Confirmation No. : 7187

Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

**REQUEST TO WITHDRAW HOLDING OF ABANDONMENT UNDER
MPEP ¶ 711.03(c) 1A BASED ON FAILURE TO RECEIVE NOTICE OF ALLOWANCE**

SIR:

Applicant respectfully requests that the holding of abandonment for failure to pay the Issue Fee be withdrawn for the above-identified application under MPEP ¶ 711.03(c)1A based on non-receipt of the Notice of Allowance, and that the non-received Notice of Allowance be re-mailed to the correct correspondence address: Frommer Lawrence & Haug LLP, 745 Fifth Avenue, New York, NY 10151 ("Frommer Lawrence").

A request was previously filed to change the customer number for the above-identified application (including association of a new correspondence address), as discussed below. However, to ensure that the Office associates the correct correspondence address with the above-identified application, a new power of attorney has been filed.

As required by MPEP ¶ 711.03(c)1.A, a copy of Frommer Lawrence's master docket report showing all replies docketed for a date three months from the mailing date of the non-received Notice of Allowance is submitted as Request Exhibit D attached to the Declaration of docket paralegals Lai Fun Yu and Lisa Antonellis.

The Declarations of Frank J. DeRosa and Suzanne Graziano show that the Notice of Allowance was mailed to the wrong correspondence address despite a request to change the correspondence address filed months before the mailing of the Notice of Allowance, and these Declarations and the Yu/Antonellis Declaration show that Frommer Lawrence did not receive a copy of the Notice of Allowance before the application became abandoned.

A request to change the customer number (and the correspondence address) for the above-identified application was filed on or about August 28, 2007 and received by the Office. Graziano ¶¶ 4-7 and Request Exhibits A and B; DeRosa ¶¶ 5-6.

The reason for the request to change the customer number is that the undersigned, then attorney of record, was relocating from Thelen Reid Brown Raysman & Steiner LLP (“Thelen Reid”) to Frommer Lawrence & Haug LLP (“Frommer Lawrence”) as of June 14, 2007, and the Assignee in the above-identified application authorized transfer of responsibility for prosecuting the above-identified application to the undersigned at Frommer Lawrence. Graziano ¶¶ 1-3; DeRosa ¶¶ 2-4.

The undersigned and his legal assistant, Suzanne Graziano, coordinated with Thelen Reid to have the USPTO customer number for the above-identified application changed from Thelen Reid’s to Frommer Lawrence’s. Request Exhibits A and B to Graziano show that a customer number change was requested for the above-identified application, but apparently was not implemented by the Office. As a result, the Notice of Allowance mailed by the Office on December 13, 2007 was not addressed to Frommer Lawrence, but to Thelen Reid in New York. Graziano ¶¶ 2-8; DeRosa ¶¶ 5-10.

A comparison of Request Exhibit C and the Notice of Allowance shows that the Notice of Allowance was mailed to an old correspondence address at Thelen Reid. Frommer Lawrence did not receive a copy of the Notice of Allowance until it was downloaded by Ms. Graziano on April 10, 2008. Graziano ¶¶ 12; DeRosa ¶¶ 10-11.

As the Graziano, DeRosa and Yu/Antonellis Declarations make clear, a search of the file jacket for the above-identified application and Frommer Lawrence’s electronic docket records failed to turn up any evidence that Frommer Lawrence had received the Notice of Allowance

(either from the Office or from Thelen Reid). As the DeRosa Declaration states, DeRosa was familiar with the above-identified application and would have remembered if he saw a notice of allowance. DeRosa ¶ 11.


In summary, a request was filed with and received by the Office that included a correspondence address change to Frommer Lawrence. However, the Office mailed the Notice of Allowance to Thelen Reid at its New York address (the current address in PAIR for Thelen Reid is San Jose, CA). As the Graziano, DeRosa and Yu/ Antonellis Declarations show, Frommer Lawrence never received the Notice of Allowance (before Ms. Graziano downloaded it on April 10, 2008).

Therefore, it is submitted that the forgoing and the Declarations filed herewith demonstrate that Applicant is entitled to a withdrawal of the holding of abandonment of the above-identified application pursuant to MPEP ¶711.03(c)1A. It is respectfully requested that the holding be withdrawn and that the Notice of Allowance be re-mailed to Frommer Lawrence.

Date: April 16, 2008

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Respectfully submitted,



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